IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 1992 OF 2005

Varadlaxmi Finance & Investment Corporation (Regd.), Office at at Mirchi Bazaar, Pandharpur. Through its Recovery Officer and Legal Officer Shri Bhagwat Vitthal Shinde, Age 31 years, Occu. Service) R/o. Now Mirchi Bazaar Shopping Centre, Basement Shop No.4 & 5, Navi Peth, Pandharpur, Dist. Solapur.) PETITIONER (Original Complainant)

Vs.

Sou. Sunita Sunil Utpat, Age 33 years, Occu.- Business, R/o. Patrakar Nagar, Near Paryatak Niwas, Pandharpur, Dist. Solapur.) RESPONDENT

Mr. S. S. Patwardhan advocate for petitioner

Mr. Rajesh More for Respondent.

CORAM: S. R. DONGAONKAR, J.
DATE : MARCH 8, 2006.

ORAL JUDGMENT:

1. Heard the learned counsel for the petitioner. None for the respondent. The petitioner has filed affidavit of service to respondent. Ms. M. H. Mhatre appeared for the State.

2. The petitioner is challenging the order of the learned Magistrate dated 12th April, 2005, passed in STC No. 2356/96, whereby he rejected an

application for allowing complainant to produce the document of money lending licence, for the reasons mentioned in the order.

3. The learned counsel for the petitioner has submitted that the document is a public document and through over sight he could not file at the relevant time. Thus, the matter in the lower Court was at the stage of submissions to be made by both sides. Therefore, the learned Magistrate observed that complainant is filing this document to fill in lacuna in this case, which might have resulted in the acquittal of the accused. it has been observed by the learned Magistrate that no party can take advantage of his own wrong and if the powers are exercised to enable the prosecution to plug-in the holes in its case, the aforesaid principle would be given a go bye, relying on the ratio laid down in the case of **R. N. Kakkar Vs. Hanif Gafoor Naviwala and others, 1996 CRI.L.J. 365.** He also relied on the principles laid down in case of **Rajendra Prasad Vs. Narcotic Cell, (1999) 6 Supreme Court Cases 110)**.

4. As stated above, none appeared for contesting respondent. Learned APP has nothing to

say.

5. On perusal of the principles laid down in the case of **1996 CRI.L.J. 365** and also the principles laid down in case of **P. Chhaganlal Daga Vs. M. Sanjay Shaw ((2003) 11 Supreme Court Cases 486)** as the document sought, which appears to be a public document i.e. money lending licence. Although it was at a late stage, for fair justice the production should have been allowed by the Trial Court / Magistrate. It may be noted that even after production of this document, the accused would be entitled to give his say and if necessary further, recall prosecution witnesses for cross examination.

6. In these circumstances, this petition needs to be allowed. The order of the learned Trial Magistrate dated 12-4-2005 below Exh. 79 in S.T.C. No. 2356/96 is hereby set aside. Petitioner allowed to produce document of money lending licence as prayed for the trial according to law.

(S. R. DONGAONKAR)